

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOSE L. GALLARDO,

Petitioner,

v.

**JOHN DO, Dawson County Sheriff,
and GARY REIBER, Dawson County
Sheriff,**

Respondents.

CASE NO. 8:07CV357

**MEMORANDUM
AND ORDER**

Petitioner has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, an application to proceed in forma pauperis, and a copy of his institutional trust account statement. After reviewing the statement, I find that petitioner's average monthly income, as reflected in the trust account statement is \$494.60.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. 28 U.S.C. § 1914(a). The court has reviewed the application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1)-(2). (The court recognizes that the provisions of 28 U.S.C. § 1915(b) do not apply to habeas cases. See *Malave v. Hedrick*, 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because the petitioner's trust account shows that the petitioner had an average monthly balance of \$100 or more in the petitioner's account for the three-month period immediately preceding the filing of the petition, the court concludes that the petitioner must be required to pay the \$5.00 filing fee because the petitioner has the financial ability to do so. See 28 U.S.C. § 1915(a).

IT IS THEREFORE ORDERED that:

1. The petitioner's application to proceed in forma pauperis (filing no. 2) is denied;

2. The petitioner is granted until November 19, 2007 to pay the \$5.00 filing fee. The petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice;
3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: November 19, 2007: deadline for petitioner to pay \$5.00 filing fee; and
4. No further review of this case shall take place until the filing fee is paid.

DATED this 16th day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge